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No. 397

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

SHERMAN H. SKOLNICK,

Petitioner,

vs.

OTTO SPOLAR, CHARLES T. MARTIN, J. WILLIAM HAYTON, ARTHUR G. LILLY, and CHARLES R. PERRIGO,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

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The petitioner respectfully asks this Court to grant a rehearing of its order of November 12, 1963, 32 LW 3476, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit in the above-entitled case as prayed for in the petition filed August 23, 1963.

REASONS FOR GRANTING THE REHEARING AND ISSUING THE WRIT.

The Court of Appeals' ruling in petitioner's case sets loose bigots who discriminate under color of law, custom, practice, and usage.

Where a state court deputy sheriff together with collaborators destroys trial by jury in order to discriminate against a citizen of the Jewish faith and race, and that citizen sues in the Federal court—can it be said that even four of the gentlemen of this Court would not vote to hear *such* a case? The District Judge by refusing to entertain petitioner's lawsuit and by denying the petitioner the right of access to the District Court, such a judge very effectively nullifies the Constitutional guarantees and the Civil Rights Acts. Are Civil Rights cases, in the 7th Circuit, to be narrowly restricted to school segregation cases and police brutality cases? And other Civil Rights cases are to be entirely denied entrance into the District Courts in the 7th Circuit? That is precisely the situation which this Court allows to continue by refusing to use its supervisory power over the lower federal courts in the 7th Circuit.

District judges that refuse a citizen entrance do not enter judgments—they wield tyrannies against patriotic citizens that seek to enforce Civil Rights for the betterment of everyone, Jew and Gentile, white and black.

The problem of district judges that defy the Constitution borders upon unsupervised abdication. For example, see Civil Liberties Docket, Volume VIII, No. 4, August, 1963 issue, page xii and page 125 (published late, November, 1963, 1715 Francisco St., Berkeley 3, Calif.), referring to *Baines v. City of Danville* (CA 4, numbers 9080, 9082). Also see *Baines v. City of Danville*, 4 Cir., 321 F.2d 643 (published Oct. 14, 1963).

This Court should grant certiorari in petitioner's case and use its supervisory power over the lower federal courts in the 7th Circuit. There should be a clear pronouncement by this Court that district judges cannot refuse to entertain Civil Rights and cannot dismiss such cases *before* hearing the facts. The petitioner was never permitted to be heard on the facts or merits of his case. Such a ruling is in direct conflict with the intervening decision of another Court of Appeals:

> "The defendants filed no answer but, pursuant to their motion, the District Court dismissed the complaint on the grounds that it failed to state a claim upon which relief could be granted and that it failed to show that the action was one arising under the Constitution and laws of the United States. The posture of the case requires us, for the purposes of this appeal, to take the plaintiff's allegations as true. Intimating no view on whether the plaintiff should ultimately prevail, *we hold that it was error for the District Court to dismiss the complaint without holding a hearing to determine the facts.*" *Lee v. Hodges*, 4 Cir., 321 F.2d 480, 483 (published October 7, 1963). (Emphasis added).

And the Court of Appeals for the Fourth Circuit says:

> "From his complaint it is evident that he claims substantial injury, under color of state law, at least to his right to the equal protection of the laws; and he also appears to rely upon the due process and the privileges and immunities clauses of the Fourteenth Amendment. *Federal jurisdiction over this complaint is well founded and possible existence of state remedies does not affect this jurisdiction.* (Citing *Bell v. Hood*, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939, 1946; *Monroe v. Pape*, 365 U.S. 167, 183, 81 S.Ct. 473, 5 L.Ed.2d 492, 1961; *McNeese v. Board of Education*, 373 U.S. 668, 83 S.Ct. 1433, 10 L.Ed.2d 622, 1963.

Mass v. Jones, 288 F.2d 342, 344, 6th Cir., cert. denied, 368 U.S. 868, 82 S.Ct. 98, 7 L.Ed.2d 65, 1961). 321 F.2d 480, at 484. (Emphasis added).

The petitioner in his Petition to this Court relies upon the same rulings by this Court as does the Court of Appeals for the Fourth Circuit. (See, Petition at pp. 23-25).

The petitioner was never permitted to plead his case and to set forth, for instance:

1. That it is a custom, practice, and usage in the Circuit Court of Cook County, Illinois, that when the jury is to deliberate on its verdict, the trial judge goes home and puts the state court deputy sheriff (or "bailiff") in charge.

2. That it is a custom, practice, and usage in the Circuit Court of Cook County, Illinois, that certain litigants are permitted to stand and talk by the jury door while the jurors are deliberating on their verdict.

3. In petitioner's case, as the jurors were entering the elevator to go home, there was the following conversation between one of the jurors and the deputy sheriff, respondent Spolar:

> Juror: "Aren't we supposed to come back tomorrow morning?"
>
> Deputy Sheriff: "No, no, go home and don't come back in this place. You won't be called again for five years—now go home! I don't want to see you around here again!"

It was under the color of such customs, practices, and usages that the petitioner was deprived.

The very reason why it was necessary to give the Federal courts jurisdiction under the Civil Rights Act is clear in the legislative debates preceding the passage of the Ku Klux Act, April 20, 1871 (now 42 U.S.C.A. Sections 1983 and 1985):

"Where these gangs of assassins show themselves the rest of the people look on, if not with sympathy, at least with forbearance. * * * *Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not.* * * * In the presence of these gangs all the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes, and feared detection. *'Among the most dangerous things an injured party can do is to appeal to justice.'*" Statement of Representative Perry of Ohio, Congressional Globe, 42nd Congress, 1st Session, Appendix 78. (Emphasis added).

"The question now is, what and where is the remedy? I believe the true remedy lies chiefly in the United States district and circuit courts. If the State courts had proven themselves competent * * * to maintain law and order, we should not have been called upon to legislate upon this subject at all." Statement of Senator Osborn of Florida, Congressional Globe, 42nd Congress, 1st Session, page 653.

In petitioner's case, the State's Attorney of Cook County, Illinois, as it is the custom, practice, and usage, without authority, defends rather than prosecutes one of the wrongdoers (Respondent Spolar), a political partisan of his. (See, App. 40-42; Rec. 69-71.) This is precisely the situation brought out in the legislative debates:

"Question. Why were not the laws enforced in these counties?

Answer. Because of political organizations that set at defiance the officers of the law.

Question. State which of those organizations was organized in opposition to the law?

Answer. From information received by me as Executive of the State, I was forced to the conclusion that the Democratic party was organized for the purpose of preventing the officers of the law *from en-*

forcing the law against any of their political partisans . . . . Representative Stevenson of Ohio (reading from the testimony of Hon. Robert K. Scott, then Governor of South Carolina), Congressional Globe, 42nd Congress, 1st Session, Appendix 291. (Emphasis added).

If the Civil Rights Acts are to be almost dead letter in the 7th Circuit, then in all fairness let it be so declared. It is an injustice to offer Constitutional promises that are, in practice in one circuit, unenforceable. It is an injustice for this Court to refuse to restrain district judges that defy the Constitution and deny entrance to a citizen.

The petitioner asks this Court to reconsider its denial of certiorari and its refusal to use its supervisory powers over the lower federal courts in the 7th Circuit.

CONCLUSION.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

SHERMAN H. SKOLNICK,
Petitioner, Pro Se.

CERTIFICATE OF PETITIONER PRO SE

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

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SHERMAN H. SKOLNICK, *Petitioner, Pro Se.*